

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1260 of 1998

in

SPECIAL CIVIL APPLICATION No 5609 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

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2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement?

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
2-5 No

KANTILAL GANDALAL MADHAK

Versus

UNION OF INDIA

Appearance:

M/S THAKKAR ASSOC. for Appellant

NOTICE SERVED BY DS for Respondent No. 1

MR SS SHAH for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.L.DAVE

Date of decision: 12/02/99

ORAL JUDGEMENT

1. Admit. Mr. Shah waives service of notice of

admission on behalf of the respondents. At the request of the learned advocates, appeal is taken up today for final hearing.

2. The appellant, being aggrieved by an order passed by the learned Single Judge on 22nd June, 1998 in Special Civil Application No.5609 of 1985, has preferred this appeal.

3. The short facts, as it emerges from the record, are as follows.

The appellant, who was discharging his duties as Railway Protection Force Constable, was served with a show cause notice Annexure-A to the petition, dated 26th September, 1985, inter alia, alleging that the appellant was stationed at Veraval during the period 30/31-8-1985 and, during that period, he in collusion and active connivance with Shri Ganga Ram and Shivpal Singh abused his position and as a Railway servant failed in his duties to prevent the theft of steam coal committed at Veraval. The competent authority was satisfied that it was not reasonably practicable to hold an inquiry in the manner provided under Rule 44 of the R.P.F. Rules, 1959 and, on satisfaction being reached, the facts referred to hereinabove were accepted to be correct and show cause notice was given to the appellant, as to why penalty of dismissal should not be imposed. The learned Single Judge was of the view that the appellant-petitioner has been given an opportunity to represent his case before the appropriate authority and petition is filed only against the show cause notice under Rule 47(b) of the R.P.F. Rules, 1959. As observed by the learned Single Judge, it was filed at a premature stage. The learned Single Judge further observed that it is also a premature stage to arrive at a finding that the competent authority was not justified to dispense with the inquiry and that the notice is illegal and against the principles of natural justice. By dismissing the Special Civil Application, interim order passed by the Court stood vacated.

4. It is contended on behalf of the respondents that the learned Single Judge has rightly dismissed the petition as it was at a premature stage and, therefore, interference is not called for in the instant case. It is required to be noted that the provision of dispensing the inquiry is akin to the provision as found in Article 311(2) of the Constitution of India. Second proviso refers that the clause pertaining to holding an inquiry shall not apply where the authority empowered to dismiss

or remove a person or to reduce him in rank is satisfied that for reasons to be recorded in writing, it is not reasonably practicable to hold the inquiry. So far as Rule 47 of Railway Protection Force Rules, 1959 is concerned, it reads as under :-

"Special procedure in certain cases:

Notwithstanding anything contained in rules 44,

45 and 46, where a penalty is imposed on a member of the force (a) on the ground of conduct which has led to his conviction on a criminal charge or (b) where the disciplinary authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules, the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit."

Relying on this Rule 47, on behalf of the respondent, it is contended that the reasons are recorded which are produced along with the Special Civil Application at page 13. Reading the reasons, it appears that there was theft of steam coal. According to the information, that was continuous activity at Veraval and that too, with the active connivance of R.P.F. staff. Therefore, special party was directed to keep secret watch in Loco Shed at Veraval on 31.8.1985. Two women carrying steam coal in gunny bags were seen at about 10.30 hours and, on seeing the members of the special force, they ran towards the hutments, leaving the steam coal there. On successfully apprehending the culprits, huge quantity of steam coal lying close to the hutments as well as steam coal filled in gunny bags removed from the coal stock was noticed. The appellant and one Shiv Prasad Singh were on duty along with Head Constable Gangaram. Head Constable-Gangaram did not come, though was called for help and after locking the office, he left the place. In the meanwhile, about 50 persons attacked the special party and assaulted them by pelting stones and took away the accused women from R.P.F. custody. Immediate assistance of town police was taken and four culprits were arrested with 100 kgs. of steam coal. The Commandant has also referred the statements of Premji, Karsan and Devji, leading coal merchants of Veraval. According to their say, huge quantity of steam coal was removed with the active connivance of appellant, Shivprasad Singh and Gangaram. According to the Commandant, all the three persons abused their position and failed in their duties to prevent and detect theft of

steam coal at Veraval Loco Shed. He further held that, they are responsible for the same and that RPF cannot afford to keep such persons in the force, who wilfully breaks the norms of discipline with sole intention to commit crime and to cause wrongful loss to the Railway Administration. He has further observed that he was convinced that the proceedings under the normal rules would not be reasonably practicable as all of them were involved and theft was committed by outsiders with their active connivance and they would be instrumental in pressurising the witnesses, who are independent witnesses, to give evidence against the RPF staff. It is also observed that outsiders also joined their hands in the unlawful activity and, therefore, they would not support the Railway Administration during the course of normal inquiry. Considering this, by invoking powers under Rule 47 of the Rules, show cause notice was issued.

5. Reading Article 311 and Rule 47 of the Rules, it is clear that it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and that is not the outcome of whim or caprice. As pointed out by the Apex Court in the case of *Jaswant v. State of Punjab*, (1991) 1 SCC 362, there must be independent material to justify the dispensing with the inquiry envisaged by Article 311(2). Thus, the proviso can be attracted only if the authority is satisfied that it is not reasonably practicable to hold a departmental inquiry and the decision to do so cannot rest solely on the ipse dixit of the concerned authority.

6. It was submitted on behalf of the respondents before us that as the show cause notice has been issued, in reply thereof all these things can be pointed out and it would be just and proper to leave it to the wisdom of the officer. We cannot accept this contention in view of the provisions contained in the law, which has been made explicitly clear by several pronouncements. In the case of *G.M. Parmar v. J. Mahapatra* (reported in 1986 GLH 189) a Division Bench of this Court following the decision reported in the case of *Union of India and another v. Tulsiram*, reported in 1985 (3) SCC 398 held that the Disciplinary Authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry because the department's case against the Government servant is weak and likely to fail. In the case of *Satyavir Singh & Others v. Union of India*, reported in 1985(2) SCALE 488, Tulsiram's case was affirmed with further lucid explanation as to the circumstances in which inquiries

can be dispensed with. The Court pointed out as under :-

"21. The point which was next urged in support

of the contention that the impugned orders were passed mala fide was that even though co-workers may not have been available as witnesses, there were policemen and police officers posted inside and outside the building and they were available to give evidence and that superior officers were also available to give evidence. The crucial and material evidence against the appellants would be that of their co-workers for these co-workers were directly concerned in and were eye-witnesses to the various incidents. Where the disciplinary authority feels that crucial and material evidence will not be available in an inquiry because the witnesses who could give such evidence are intimidated and would not come forward and the only evidence which would be available, namely, in this case, of policemen, police officers and senior officers, would only be peripheral and cannot relate to all the charges and that, therefore, leading only such evidence may be assailed in a court of law as being a mere farce of an inquiry and a deliberate attempt to keep back material witnesses, the disciplinary authority would be justified in coming to the conclusion that an inquiry is not reasonably practicable. The affidavit filed by the Joint Director, Research and Analysis Wing, Cabinet Secretariat, Hari Narain Kak, who had passed the impugned orders, sets out in detail the various acts of intimidation, violence and incitements committed by each of the Appellants. Copies of the written reasons for dispensing with the inquiry in the case of the Appellants have also been annexed to the said affidavit. It is clear from a perusal of the said affidavit and its annexures that the police officers, policemen and senior officers could not have possibly given evidence with respect to all these acts. The said affidavit further states that the senior officers were also intimidated and were threatened with dire consequences, if they gave evidence. Further, grievances were made against the senior officers of the RAW in the said charter of demands submitted by the said Association and the evidence of senior officers would have been attacked as being biased and partisan. There is thus no substance in this point also."

In the present case, it is clear that the officers of the Railway Protection Force were especially deputed at Veraval Loco Shed. They noticed two outsider women committing theft and they followed. The raiding party's version is reflected in the reasons to the effect that the Head Constable-Gangaram, who was on duty, did not come immediately for help and locked the office and went away. Therefore, the officer could have been examined to point out that Gangaram acted in the manner as indicated in the reasons. There are statements of three persons, namely, Premji, Karsan and Devji, who are described as coal dealers of Veraval and it is these persons who have stated before the officer that huge quantity of steam coal was removed with the connivance of the appellant, Shivpal and Gangaram. The reasons given for not proceeding with the inquiry is that independent witnesses may be pressurised. There is not a whisper that these three persons were receiving coal from the appellant and two others. They being the persons named in the recorded reasons being engaged in coal business were conveying the information. Therefore, it can be said that the officers of the raiding party and these three persons were the witnesses. Certainly, the officers could not have been pressurised by R.P.F. Constables not to give version against them. If, in such a situation, a free hand is given, then there are all chances of misuse of power and delinquent may not have proper opportunity, which under ordinary circumstances is required to be provided to him. There is nothing to show that officers and coal merchants were threatened not to give evidence.

7. Mr. Shah submitted that it is only at the stage of show cause notice and all these could be examined after the punishment is imposed or the appeal is decided. Reading the Apex Court's judgment, it is clear that the Court has power to consider whether clause (b) of Article 311(2) of the Constitution or an analogous provision in the service rule was properly applied or not. Considering the facts and circumstances of the case, it would be more advisable to consider at this stage and not to examine after the penalty is imposed. That cannot be allowed. The reasons recorded to dispense with the inquiry should be relevant and the reasons recorded in the instant case are such that it amounts to abuse of power conferred upon the authority by Rule 47. From what we have indicated above, it is not possible to say that the inquiry cannot be held.

8. In view of what what we have stated above, this appeal deserves to be allowed and is, accordingly,

allowed. The order passed by the learned Single Judge is quashed and set aside. The Special Civil Application is allowed. Annexure 'A' is quashed. It is directed that the order with regard to misconduct in the instant case shall not be passed without the inquiry being held, as provided in the Rules.

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